HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Application No. 186 of 2006

Date of Decision : 28th March, 2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting.

Date Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Miscellaneous Application No. 186 of 2006

Shivcharan Singh & 3 others … Applicants

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Laksar,
   District – Haridwar
3. Kunwar Singh
   S/o Shri Suresh Chandra
   R/o Village Bharuwala
   Police Station – Khanpur
   District – Haridwar … Respondents

Sri Rajendra Singh, learned counsel for the applicants
Sri Nandan Arya, learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

This petition u/s 482 Cr.P.C. has been directed to quash the criminal complaint Case No. 495 of 2005 and set aside the impugned summoning order of cognizance dated 17.12.2005 passed by the learned Judicial Magistrate, Laksar in Criminal Complaint case No. 495 of 2005, Kunwar Singh Vs. Shivcharan & others u/s 452, 323, 504, 506, 392 and 427 I.P.C.

Brief facts for the disposal of this petition are that opposite party No. 3 has filed complaint on 28.11.2005 with the allegation that on 22.08.2005 the applicant No. 3 left the house with her father applicant No. 1 alongwith all the articles when the complainant was out of station with his father for the medical treatment and his brother was also in the field. The applicants came in the house of the respondent No. 3 on 25.08.2005 at about 3:00 p.m. and they hurled abuses upon the respondent and respondent No. 3 was assaulted by all the applicants and they snatched the key and took away the jewellary, wrist watch and Rs. 2600/-. While leaving the spot, they threatened the respondent No. 3 for the dire consequences. The learned Magistrate recorded the evidence of Kunwar Singh u/s 200 Cr.P.C.

and the evidence of Jaipal and Madan Singh were also recorded u/s 200 and 202 Cr.P.C. Thereafter, the learned Magistrate after appreciating the evidence, passed the impugned order of summoning the applicants u/s 452, 323, 504, 506, 392 and 427 I.P.C.

The learned counsel for the applicants contended that the respondent No. 3 lodged the F.I.R. u/s 498-A, 406, 323 I.P.C. and ¾ D.P. Act and a petition u/s 125 Cr.P.C. is also pending against the respondent No. 3. It was further contended that the respondent No. 3 had filed a petition u/s 9 of the Hindu Marriage Act before the learned Principle Judge, Family Court, Haridwar for the conjugal of matrimonial right. It was further contended that the applicants have not alleged this incident in the plaint filed u/s 9 of the Hindu Marriage Act on 07.09.2005. It was further contended that the present complaint was filed on 28.11.2005 whereas the incident took place on 25.08.2005. The complaint is based on malafides.

Perusal of the record reveals that there is litigation pending in between the parties and this fact has been suppressed by the complainant before the court below. The learned Magistrate had not put any question to weigh the veracity of the incident and statement had been recorded in the routine manner. The cognizance order, as such, is liable to be quashed and the Magistrate is further directed to ask the complainant to file the copies of the FIR u/s 498-A, 406, 323 I.P.C, copy of the complainant u/s 125 Cr.P.C. and the copies of the plaint filed u/s 9 of Hindu Marriage Act which has been filed before the learned Principle Family Judge. The learned Magistrate after obtaining it on record will put the question to check the veracity of the complaint.

It has been held in **Hon'ble Apex Court in M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705** that :

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused

must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The above proposition of law clearly emphasizes that the Magistrate, while taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant.

In view of the above discussion, the cognizance order dated 17.12.2005 is liable to be set aside and the matter is remanded back to the Judicial Magistrate to pass an appropriate order.

In view of the above observation, the petition is disposed of accordingly.

(J.C.S. RAWAT, J.)

28th March, 2006
Shiv